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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/815,324	03/31/2004	Brian Edwards	FDEHN3.001AUS	7524
20995	7590	10/11/2006	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			HYLTON, ROBIN ANNETTE	
			ART UNIT	PAPER NUMBER
			3781	

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/815,324

Applicant(s)

EDWARDS, BRIAN

Examiner

Robin A. Hylton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 9-24-04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of the product claims in the reply filed on July 14, 2006 is acknowledged.

Drawings

2. Figure 9 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

3. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. The title should include at least one technical, or inventive, feature of the claimed instant invention.

Claim Rejections - 35 USC § 112

4. Claims 1-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The structure of the lid is insufficiently set forth in the claims. For instance, only a perimeter is set forth in claim 1. There is no structural relationship between the lid perimeter of claim 1 and the projections in claim 18. Additionally, it appears the projections securing the lid to a container contradicts the engagement between the lid perimeter and container of claim 1.

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Regarding claim 18, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Regarding claims 18 and 21, the phrase "or the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-3,6-8,11,20, and 21 are rejected under 35 U.S.C. 102(e) as being anticipated by Helms, Jr. (US 6,845,876). Lid 10 is seen in figures 5 to be capable of having its perimeter shortened and lengthened.

With respect to claim 3, member 18 is the deformable portion forming part of planar surface 16.

With respect to claims 6-8, the valve 7 serves as the catch.

With respect to claim 14, the resilient seal is member 18.

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7. Claims 1,2,6,11-13,20 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Chen (US 4,968,197). Vertical actuation of rod **12** may reduce the perimeter of the lid.

8. Claims 22, 24, and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Schellenbach (US 5,447,674). Lid **3** has seal **6**. Injection point is centrally located (see fig. 1).

9. Claims 1-3,5-9,11 are rejected under 35 U.S.C. 102(b) as being anticipated by Sarafinas (US 3,131,825). Regarding claims 6 and 7, the locking member is element **7** and the catch is element **10**. Claim 5 is a product-by-process claim and does not further structurally limit the claimed lid.

10. Claims 1-8,10,11,14,15,17, and 19-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Harschel (US 3,640,422). See figures 3 and 4 and the description of the lid in the specification.

11. Claims 22-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Haug (DE 42 06 244). Lid **10** comprises a body **15**, a seal **12**, and an elastomeric deformable portion **13** and **14** for removable of the lid from a container.

12. Claims 1-4,6-11,14, and 16-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Underwood (US 4,358,024). See the embodiment illustrated in figure 4-7. Whereas the actuator can be gripped in more than one location, it comprises finger grips (to the degree finger grips are set forth in the claim).

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Helms.

Helms discloses the claimed invention except is silent regarding the use of polypropylene for the lid. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the lid of polypropylene, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. Doing so would provide a durable plastic material less susceptible to corrosion than a metal lid.

15. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sarafinas.

Sarafinas discloses the claimed invention except is silent regarding the use of polypropylene for the lid. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the lid of polypropylene, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. Doing so would provide a durable plastic material less susceptible to corrosion than a metal lid.

16. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sarafinas in view of Harschel (US (US 3,640,422).

Sarafinas teaches the claimed lid except for a plurality of finger grips.

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Harschel teaches it is known to provide a lid with finger grips for manipulating a lid.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of finger grips to the lid of Sarafinas. Doing so allows for easy manual manipulation of the lid without tools.

17. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sarafinas or Harschel or Chen or Underwood or Helms.

The prior art references are silent regarding the size of the lid.

It would have been an obvious matter of design choice to form the lid of Sarafinas or Harschel or Chen or Underwood or Helms with a diameter less than 250mm, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art.

Conclusion

18. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F.R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

19. The prior art made of record and not relied upon is considered pertinent to applicant's

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disclosure. Various prior art closures teaching features similar to those disclosed and/or claimed are cited for their disclosures.

20. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

21. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number 571-273-8300 on the date shown below:

Typed or printed name of person signing this certificate

Signature _____

Date _____

22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse, can be reached on (571) 272-4544.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR

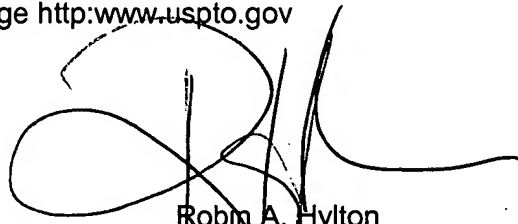
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CANADA) or 571-272-1000.

Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
- Fee Questions (571) 272-6400
- Inventor Assistance Center (800) PTO-9199
- Petitions/special Programs (571) 272-3282
- Information Help line 1-800-786-9199
- Internet PTO-Home Page <http://www.uspto.gov>

RAH
September 19, 2006



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GAU 3727